in law in, the office of Messrs. Shearn, Delamore and Company.

Now sub-section (5) of section 5 of the Ordinance provides that the Court can only exercise the powers conferred by that section in cases where special grounds exist. On behalf of Mr. Wrigglesworth the following special grounds were submitted viz :—

(a) he had been a Solicitor's articled clerk in England for a period of approximately one year and eight months;

(b) he had gained knowledge of local laws while acting as a District Court Judge, for a period of nearly four months; and

(c) he gained local legal experience while presiding over a District Court for nearly four months under the British Military Administration.

Mr. Ramani, who opposed the motion on behalf of the Bar Council, submitted that none of these alleged special grounds were relevant, as the special grounds required by the Ordinance must relate to periods after petitioner's call to the Bar. I do not agree with this submission. In my opinion the word "after" in sub-section (5) of section 5 of the Ordinance relates only to the one special ground specified in that sub-section viz: "the active practice of the profession". In adopting this interpretation I am following the precedents provided by *Tangamani's petition*[1] and *Ahmad bin Mohamed Ibrahim's petition*[2] which was not reported apparently but which was editorially considered at page lxi of volume XII of the Malayan Law Journal.

Here I may interpolate the remark that if Mr. Wrigglesworth had read as a student in a Barrister's Chambers in England for the same period as he served his articles in a Solicitor's office he would, by virtue of the provisions of section 5 (3) (a) (i) of the Ordinance, have only been required to attend and study in the office of a local practitioner for six months. The questions arise therefore why is this distinction made between being articled to a Solicitor and reading in a Barrister's Chambers, and am I entitled to consider this as a special ground? As local practitioners are both Advocates and Solicitors the only reason for the distinction I can see is that that number of persons who begin as Solicitor's articled clerks in England, are next called to the English Bar, and finally arrive to practise in the Federation of Malaya must be so small that the draftsman did not consider it necessary to include any special provision dealing with the matter.

As a considerable part of local practitioners' work is concerned with the services rendered by a Solicitor in England, it appears to me that service as an articled clerk in England would afford most valuable experience for an intending local practitioner. Therefore, although no specific provision is made in sub-section (3) of section 5 of the Ordinance relating to such service, I should be prepared to accept it as one of the special grounds which may be advanced under sub-section (5) of the same section. But *Kim Chwee Chia's case*[3] has decided that at least two special grounds must be established under the section before the Court may exercise its discretion. So I must now proceed to consider the other grounds submitted in support of this motion.

The experience gained as a President of a District Court and as a District Court Judge is both specialised and limited, and affords no experience at all in several aspects of an Advocate and Solicitor's daily tasks Mr. Hastings, who opposed the motion on behalf of the Selangor and Negri Sembilan Bar Committee, pointed out, that officiating in a judicial capacity cannot be regarded as affording e.g. the same experience as the active practice of the profession with is the one special ground specified by the Ordinance itself. I agree with this submission, and am of opinion that, although valuable experience may be gained on the Bench in the District Court, it is no substitute for the first hand knowledge which is derived from attending, and studying in, a practitioner's office. It necessarily follows that I hold that the second and third grounds submitted on behalf of Mr. Wrigglesworth are not "special grounds" as envisaged by the Ordinance. In view of Mr. Wrigglesworth's service with the Armed Forces I regret to have to arrive at this decision. There will be no order on the motion.

No Order.

PUBLIC PROSECUTOR v. WONG PENG WAH AND 2 OTHERS.

[Orig. Crim. Juris. (Laville, J.) May 10, 1948]
[J.B. — Crim. Case No. 8 of 1948]

Firearms and Ammunition (Unlawful Possession) Ordinance — Ordinance No. 28 of 1946, section 3 — Definition of unlawful possession — Proof of criminal possession of arms and ammunition — Conscious and exclusive possession — Explosives Enactment Johore Laws No. 56 — Arms Enactment Johore Laws No. 64.

In this case the three accused were charged with unlawful possession of arms and ammunition, to wit, two Lewis guns, 272 rounds of ammunition Sten, and 186 rounds of .303 ammunition. The evidence was that the arms and ammunition were found in a car driven by the second accused and in the back of which were sitting the first and third accused. The question was whether the accused or any one of them was in possession of the arms and ammunition.

Held, (a) To prove criminal possession in normal circumstances the prosecution must prove (i) conscious possession and (ii) exclusive possession; (b) Where any one of three men may be the person in possession or all three jointly, and the evidence is merely one of juxta position of all three to the article in question, and the juxta position is such that from it an equal inference in regard to any of the three can be drawn, it is impossible for the Court to choose between the three men; (c) Where the juxta position is one which precludes an inference of guilty knowledge on the part of any or all of the accused no inference as to such knowledge can be drawn. Without such knowledge the theoretic power of the disposal of the article in question which may exist in any or all of them jointly and severally will not suffice for a conviction; (d) Ordinance No. 28 of 1946, Firearms and Ammunition (Unlawful Possession), is in its essence one that merely increases the penalty for unlawful possession of arms and ammunition above the maximum laid down in other ordinances or enactments dealing with such possession and does not stultify or abrogate the provisions of any other law dealing with arms or ammunition, and the prosecution must prove that the provisions of some other law dealing with unlawful possession of arms/ammunition still in force have been broken and in order to do this it is open to them to use all powers given them for that purpose by the said law; (e) Where the said law as in the case of the Arms Enactment of Johore lays down that every person who is proved to have had in his possession or under his control anything whatever containing any arms shall, until the contrary be proved, be deemed to have been in possession of those arms, then when an accused person is proved to have had in his possession or control anything containing arms, the onus is on him to prove that he was not in possession of those arms. The presumption raised is rebuttable, but the rebutting evidence must go to show absence of knowledge of the gun or absence of power of disposal and control of the gun.

CRIMINAL TRIAL.

W. M. McCall for Public Prosecutor.

M. Ismail for Accused.

Laville, J. : — In this case Wong Peng Wah and the two others are charged under section 3, Ordinance 28/46, with unlawful possession of arms and ammunition, to wit, two Lewis guns, 272 rounds of ammunition Sten, and 186 rounds of .303 ammunition on 14.1.48 about 10.30 p.m. on the Geylang Patah Road.

The prosecution evidence is that a police party, on patrol in a jeep on that road that night, stopped two jeeps coming away from Geylang Patah and searched them and their occupants, but found nothing incriminating. As the search was going on, a car, which subsequently proved to be B4850, drove up from Geylang Patah with lights on and was stopped. The three occupants were the three accused, No. 2 driving and the others in the back. They were turned out of car and searched, and No. 1 accused was discovered to have on him $1,831 S. S. currency, and the other two men nothing. This aroused suspicion in the mind of Inspector Karthigasu in charge of the patrol, and he got into the car with another D.P.C. and had it driven to Scudai police station. Inspector Karthigasu sat in front with No. 2 accused, the driver, and D.P.C. 841 sat at back between No. 1 and No. 3 accused.

At Scudai police station the car was thoroughly searched; on the floor of the rear portion of car was found a bag containing 272 rounds of Sten ammunition. It was a closed bag. In boot of car, behind the usual accessories of a car such as tubes, jack, a sack, etc., was found concealed two Lewis guns and a tin containing 186 rounds of .303 ammunition. Accused were promptly arrested.

The prosecution evidence is that from the time the police caught sight of B4850 till it was stopped by them the car did not stop and no one could have got out of it.

The defence evidence is that the three accused were travelling in B4850 that day to Geylang Patah with the owner of the car; that they reached Geylang Patah at 5 or 6 p.m. and that the towkay of the car there, after the three accused had got down and gone to a coffee shop, drove the car away on his own business. He returned to the coffee shop about 8 p.m. and told the three accused he would be staying a few nights in Geylang Patah, but they could take the car B4850 back to Malacca. They agreed and got into the car and were setting out to Malacca, and on their way were stopped and arrested. They say they knew nothing of the contents of the car or the boot, and were quite innocent.

They call in evidence Tay Lock Seng, a planter near Geylang Patah, who saw the car go by him on its way to Geylang Patah at 3.30 p.m. or so, containing four men, all Chinese. He is supported by his brother, also called by Defence, Tay Jeow San, who, in the course of a report on another matter, mentioned that Tay Lock Seng had told him this on 14th about 4 p.m. He thought the car was B4850, and that is the number mentioned in the report.

The inference the Court is asked to draw is that the arms and ammunition found in the car was introduced into it by the fourth man in the car while he was away on his own business at Geylang Patah.

The registered owner of the car was not called by the Prosecution to show that the accused were in the car with the owner's knowledge and permission or otherwise, nor did the Defence call the owner for a similar purpose. It was not a part of the case for the prosecution that accused were in possession of the car with the owner's permission, and the defence raised

the plea that there were four men in the car, presumably on the evidence the fourth being the owner. In view of this, I could not accept the defence suggestion that there were four men in the car on the way to Geylang Patah, of whom the fourth was the owner, and that he was the man who was responsible for the presence of the arms and ammunition in the car on the return journey. I reject the defence entirely.

The issue therefore remains purely one of law, namely, on the evidence, were the three accused or any one of them in possession of the arms and ammunition found in the car by the police.

To prove criminal possession in normal circumstances the prosecution must prove (a) conscious possession and (b) exclusive possession, that is that the accused knew the article in question was within his powers of disposition and also that it was in his powers of disposition and not in another person's. In cases such as this, where any of the three men may be the person in possession or all three jointly, and the evidence is merely one of juxta position of all three to the article in question, and the juxta position is such that from it an equal inference in regard to any of the three can be drawn, it is impossible for the Court to choose between the three men; and where the juxta position is one which also precludes an inference of guilty knowledge on the part of any or all of the accused no inference as to such knowledge can be drawn. Without such knowledge the theoretic power of disposal over the article in question which may exist in any or all of them jointly and severally will not suffice for a conviction. If the matter rested there, there would be nothing for the Court to do in this case but to acquit the accused.

Ordinance 28 of 1946, however, is in its essence one that merely increases the penalty for unlawful possession of arms and ammunition above the maximum laid down in other Ordinances or Enactments dealing with such possession. It defines a firearm in much the same terms as the Arms Enactment of Johore Laws No. 64 defines arms, but excludes air guns and air pistols; its definition of ammunition is similar to that given in the Explosives Enactment, Johore Laws, No. 56, which however does not expressly include grenades and bombs as such.

Section 3 of the Ordinance penalises the unlawful possession of arms and ammunition, but the wording saves, that is to say, does not stultify or abrogate the provisions of any other law dealing with arms or ammunition.

Unlawful possession is defined in the Ordinance as possession contrary to the provisions of any Ordinance or Enactment or any rule made thereunder in force in that part of the Federation of Malaya in which the firearm or ammunition is possessed.

The Arms Enactment No. 64 and the Explosives Enactment No. 56 are still law in that part of the Federation of Malaya occupied by the State of Johore.

To enable the provisions of Section 3 of the Ordinance No. 28 of 1946 to operate — they are purely penal — the prosecution must prove that the provisions of some other law dealing with unlawful possession of arms and or ammunition still in force have been broken, and in order to do this it is, in my opinion, open to them to use all the powers given them for that purpose by the said law.

If this is correct, in cases charging unlawful possession of arms and or ammunition in the State of Johore, the unlawfulness of the possession must be proved to arise under the provisions of the Arms and or Explosives Enactment of Johore.

Section 48 of the Arms Enactment No. 64 of Johore Laws lays it down that every person who is proved to have had in his possession or under his control anything whatever containing any arms shall until the contrary be proved be deemed to have been in possession of them. This section, once it is proved that an accused man has had in his possession or control anything containing arms, throws the *onus* on him to prove that he was not in possession of those arms.

Applying this proviso to the present case, it is clear on the evidence that the accused were in possession or control of a motor car B4850 at about 10 p.m. on 14.1.48 containing two Lewis guns, one of which (D.1.) was capable of discharging a bullet. In my opinion they were jointly in control and possession of the car, in that they were clearly under no compulsion and were proceeding together in the same direction in the same vehicle. This view was fortified by the defence evidence which showed that they were all bound for the same destination and that their common object was to proceed to Malacca when they set out from Geylang Patah.

If that is accepted, they were by statute in possession of the arms in the car, to wit a Lewis gun (Ex.D.1.), and it must be assumed that they were conscious of its presence and were in a position in regard to it which gave them power of disposal and control thereof for the time being.

This assumption is rebuttable, but the rebutting evidence must go towards showing absence of knowledge of the gun or absence of power of disposal and control of the gun. The only evidence produced by the accused is a blank denial of knowledge or control and a suggestion that a fourth man, who was said to be in the car on the way *to* Geylang Patah, might have put the gun in the car. In my view, this evidence has not even that slight weight which is all that is required from the defence to discharge the *onus* laid on them by law.

In view of the fact that the other Lewis gun (Ex.D.2) was proved to be unable to discharge a missile, no guilt can attach to their possession of it as it does not fall within the category of arms. As to the ammunition found in the car, there is no proviso in the Explosives Enactment, Johore, of a similar nature to Section 48 of the Arms Enactment, and the presence of the ammunition in the car does not therefore cast the *onus* on the defence to prove non-possession, and as the prosecution have failed to prove either knowledge or power of disposal in regard to it — it was in a closed bag — no guilt in regard to that can attach to any of the accused.

On the charge as a whole therefore I find the accused jointly guilty of possession of arms, to wit one Lewis gun. They must be assumed to have had a joint intention to exercise control over the gun and a joint knowledge of its existence, in that they had a joint possession of the motor car and an intention of using it jointly, and they are therefore severally liable.

I sentence the accused to 7 years R.I. each to date from date of arrest (if not on bail).

Accused Convicted.

NG WAH v. PUBLIC PROSECUTOR.

[Ct. of App. (Willan, C.J. Malayan Union, Murray-Aynsley, C.J. Singapore and Pretheroe, J.) Sept. 17, 1947]
[Ipoh — Criminal Application No. 5 of 1947]

Appeal — Application for leave to appeal out of time — Certificate of the Public Prosecutor under section 45A(i) of the Courts Enactment — F.M.S. Courts Enactment S. 37.

The Applicant was tried by the District Judge for robbery and during the course of trial, to prevent possible intimidation of a witness, the public was excluded from the Court. On this ground **inter alia** the applicant appealed to the High Court which dismissed the appeal and thereupon Counsel for the appellant applied to the Public Prosecutor for a certificate under section 45A (i) of the Courts Enactment to enable the appeal to be heard de **novo** by the Court of Appeal, on the ground that the question of whether the District Judge has power to clear the Court in a criminal trial is a matter of such public interest that it should be decided by the Court of Appeal. The Public Prosecutor, not having the High Court's judgment before him, was unable to certify within 14 days of the decision of the High Court, but subsequently did so.

Held, that as the "failure" in this case was not a failure of applicant, there was no jurisdiction to extend the time and therefore the appeal could not be reheard.

Obiter Dicta. — That the Courts Enactment should be amended to give greater freedom of action to the Public Prosecutor in granting certificates under s. 45A (i) of the Courts Enactment.

COURT OF APPEAL.

S. K. Das for the Applicant.

M. G. Neal (Crown Counsel) for the Respondent.

The Judgment of the Court was given by :—

Willan, C. J. : — This is an application for permission to appeal out of time notwithstanding that the certificate of the Public Prosecutor under section 45A(i) of the Federated Malay States Courts Enactment (Cap. 2) was not filed within the period prescribed by that section.

This application arises out of the conviction of the Applicant by the District Judge at Ipoh for the offence of robbery under section 392 of the Penal Code.

The Applicant appealed against his conviction to the High Court at Ipoh on two grounds. The only one which is relevant to this judgment is that the District Judge at the trial ordered the Court "to be cleared" whilst one prosecution witness gave part of her evidence.

The Appeal was dismissed by the High Court and thereupon Counsel for the Applicant applied to the Public Prosecutor for a certificate under section 45A(i) of the Federated Malay States Courts Enactment to enable the appeal to be heard *de novo* by the Court of Appeal, on the ground that the question of whether the District Judge has power to clear the Court in a criminal trial is a matter of such public interest that it should be decided by this Court.

The Public Prosecutor informed Counsel for the Applicant that he was not disposed to grant such a certificate until he had seen the judgment of the High Court, with the result that it was impossible for him to sign and file his certificate with the Registrar, Supreme Court, as required by section 45A(i) of the Courts Ordinance, within 14 days of the decision of the High Court dismissing the appeal.

The Public Prosecutor after perusing the judgment of the High Court dismissing the Appeal granted his certificate and the Applicant applied to us under section 37 of the Federated Malay States Courts Enacment